

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 9, 10, 26, 27, and 41-46 are pending in the application, with claims 9, 26, and 27 being the independent claims. Claims 9, 26, 27, 42, 44, and 45 are sought to be amended to correct matters of form. Applicants reserve the right to prosecute similar or broader claims, with respect to the amended claims, in the future. These changes should be entered after final as they raise no new issues and pose no new search requirement by the Examiner, and the changes place this Application in condition for allowance and/or in better condition for appeal. Applicants believe these changes do not change the scope of the claims, and are only made to clarify the features already recited in the claims. These changes are believed to introduce no new matter, and their entry is respectfully requested.

The claims presented in this Application should be interpreted solely based on the file history of this Application, not the file history of any predecessor or related application. With respect to this application, Applicants hereby rescind any and all disclaimers of claim scope made in any parent application(s), any predecessor application(s), and any related application(s). The Examiner is advised that any previous disclaimer of claim scope, if any, and any references that allegedly caused any previous disclaimer of claim scope, may need to be revisited. Nor should any previous disclaimer of claim scope, if any, in this Application be read back into any predecessor or related application.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 112

Claim 44

Claim 44 stands rejected under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Without acquiescing to the merits of this allegation, Applicants have amended dependent claim 44 to accommodate the Examiner's rejection. Accordingly, Applicants respectfully request the rejection to claim 44 under 35 U.S.C. § 112, second paragraph, be reconsidered and withdrawn.

Rejections under 35 U.S.C. § 103

Claim 26

Claims 26 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over United States Patent No. 5,963,556 to Varghese et al. ("Varghese") in view of United States Patent No. 6,993,681 to Haynes et al. ("Haynes"). Applicants respectfully traverse the rejection and provide the following arguments to support patentability.

The Office Action correctly acknowledges that Varghese does not teach or suggest at least the feature of "*performing a reset process, by the repeater, that enables the repeater to reestablish a new connection with the switch over the link in response to*

the determination" as recited by independent claim 26. (Office Action, p. 3.) To cure this deficiency, the Examiner takes Official Notice that "[t]he use of [a] repeater to perform a reset process by itself is... well known in the art." (Office Action, p. 3.) The Examiner cites to Haynes as allegedly verifying performing of a reset process in a repeater. (Office Action, p. 3.)

The Examiner may take Official Notice of a fact being well known in the art by providing "documentary evidence where the fact noticed was readily verifiable." (M.P.E.P. §2143.A.) Here, the alleged fact of "us[ing] of [a] repeater to perform a reset process by itself" is not readily verifiable from the disclosure of Haynes. In particular, Haynes does not disclose a repeater, nor does it disclose a repeater performing a reset process. Rather, Haynes discloses a reset process for a client upon detection of a connection failure between the client and a system manager. (Haynes, abstract, ll. 15-17; 2: 55-59.) According to Haynes, the client and the system manager "can be implemented as any of a variety of processing devices, or a combination thereof, such as personal computer, a desktop computer, a server, a handheld computing device, a programmable logic controller, and the like." (Haynes, 5:46-49.) The client and/or the system manager of Haynes is not a repeater as recited by independent claim 26. Therefore, the alleged fact of "us[ing] of [a] repeater to perform a reset process by itself" is not readily verifiable from the disclosure of the reset process for the client of Haynes. Consequently, the Official Notice of taken by the Examiner is improper. Accordingly, Applicants respectfully request that the rejection of claim 26 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Claim 27

Claim 27 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Varghese in view of Haynes and United States Patent No. 6,307,837 to Ichikawa et al. ("Ichikawa"). Applicants respectfully traverse the rejection and provide the following arguments to support patentability.

The Office Action correctly acknowledges that Varghese does not teach or suggest at least the feature of "*performing a reset process, by the repeater, that enables the repeater to reestablish a new connection with the switch over the link in response to the determination*" as recited by independent claim 27. (Office Action, p. 5.) As with independent claim 26, the Examiner takes Official Notice that "[t]he use of [a] repeater to perform a reset process by itself is... well known in the art" to cure this deficiency. (Office Action, p. 5.) The Examiner once again cites to Haynes as allegedly performing a reset process in a repeater. (Office Action, p. 5.)

As discussed above, the alleged fact of "us[ing] of [a] repeater to perform a reset process by itself" is not readily verifiable from the disclosure of the reset process for the client of Haynes. Consequently, this Official Notice of taken by the Examiner, in regards to independent claim 27, is improper. Ichikawa does not teach or suggest these missing features of independent claim 27, nor does the Office Action so allege; therefore, the combination of Varghese, Haynes, and Ichikawa does not render independent claim 27 obvious. Accordingly, Applicants respectfully request that the rejection of claim 27 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Claims 9, 10, and 41-46

Claims 9, 10, and 41-46 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Varghese in view of United States Patent No. 6,292,508 to Hong et al. ("Hong"). Applicants respectfully traverse the rejection and provide the following arguments to support patentability.

Applicants previously amended independent claim 9 to recite at least the feature of "*sending, by the previously unknown repeater, a second heartbeat message using the VLAN ID identifying the switch after finding the first heartbeat message.*" (Amendment and Reply Under 37 C.F.R. § 1.111, filed on March 16, 2010, p. 2.) The Office Action does not address these newly added features of independent claim 9. In other words, the Office Action does not present a sufficient showing that the art of record teaches or suggests these previously added features. Applicants respectfully submit that this omission amounts to a failure to articulate a *prima facie* case of unpatentability and the burden to rebut this rejection has not yet shifted to the Applicant. (M.P.E.P. § 706.07(a).) Accordingly, Applicants respectfully request that the rejection of claims 9, 10, and 41-46 under 35 U.S.C. § 103(a) be reconsidered and withdrawn or that a new, non-final office action be issued by the Examiner addressing this omission.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Michael R. Malek
Attorney for Applicants
Registration No. 65,211

Date: 08/02/10

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600
1136540_1.DOC